



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 9, 1991

Mr. John R. Neel
General Counsel
General Services Commission
P. O. Box 13047, Capitol Station
Austin, Texas 78711-3047

OR91-632

Dear Mr. Neel:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 10987

The Travel and Transportation Division of the General Services Commission received proposals from rental car companies to provide rental car services to state employees. The commission has received several open records requests for the proposals, and claims that information about the proposers' financial condition and customer references is excepted from required public disclosure based on section 3(a)(10) of the Open Records Act. We have received letters from four car companies urging that the information in question be withheld.

Section 3(a)(10) of the Open Records Act authorizes a governmental body to withhold two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. In regard to the commercial or financial information branch of section 3(a)(10), confidentiality is not imparted when the individual supplying the information indicates that he expects the information to be kept confidential. Attorney General Opinion H-258 (1974). Section 3(a)(10) exempts from public disclosure only commercial or financial information that is made confidential by statute or judicial decision. Open Records Decision No. 592 (1991). None of the companies who submitted a response to this office established that its

financial records are deemed confidential by statute or judicial decision. Consequently, the financial information in the bid proposals of each rental company must be released. *Id.*

When considering trade secret claims under section 3(a)(10), this office applies the definition of "trade secret" of the Texas Supreme Court, which adopted its definition from the Restatement of Torts, section 757. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), cert. denied, 358 U.S. 898 (1958). Six factors are considered in determining whether information constitutes a trade secret:

1. the extent to which the information is know outside of [the company's] business;
2. the extent to which it is known by employees and others involved in [the company's] business;
3. the extent of measures taken by [the company] to guard the secrecy of the information;
4. the value of the information to [the company] and to [its] competitors;
5. the amount of effort or money expended by [the company] in developing this information;
6. the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS, § 757 comt. b (1939); Open Records Decision No. 552 (1990).

Based on the facts submitted to us in reference to these 6 criteria, we conclude that Advantage Rent-A-Car has established that its customer list constitutes a trade secret. *See id.* None of the other rental car companies who responded to our letter has provided us with sufficient facts to conclude that their customer list is a trade secret. Therefore, you may withhold the customer list of Advantage Rent-A-Car, but must release the customer lists of all of the other companies.

We must also dispose of the suggestion made by counsel for one of the companies that the requested information is excepted from required public disclosure by section 3(a)(4) of the Open Records Act. That exception protects "information which, if released, would give advantage to competitors or bidders." Section 3(a)(4) does not except bids from disclosure when the bidding is over and the contract has been awarded. Open Records Decision No. 306 (1982). In this case, the contract has been awarded. Thus, section 3(a)(4) may not be invoked to withhold this information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-632.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Opinion Committee

KHG/lcd

Ref.: ID# 10987

Enclosure: ORD 552, 541

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